S.B. CIVIL WRIT PETITION NO. 3779/05

Date : 12.10.2006

HON'BLE MR. BHAGWATI PRASAD, J.

Mr. Dinesh Mehta for the petitioners.
Mr. Sangeet Lodha, for the respondent.

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Heard.

The present petition is filed by the petitioner impugning a notice issued by ACTO, Ratangarh under Section 37 of the Rajasthan Sales Tax Act. The petitioner is a manufacturer of stone grit and dust. He applied and was issued a certificate under Rajasthan Sales Tax Act Incentive Scheme, 1989 for manufacturing operations.

The claim of the petitioner is that a certificate was issued by the Screening committee under the Incentive Scheme of 1989 and the exemption certificate being in existence, the notice of ACTO (Annex.4) is a notice without jurisdiction as the eligibility certificate for tax exemption (Annex.3) is in currency. It could only be revoked by following the procedure as prescribed under law. Merely, because there was a Supreme Court decision and transformation of grit is not being approved to be a manufacturing process, the exemption granted to him could not have been set at naught by the ACTO. He has relied on a decision of this Court in the matter of M/s Arihant Solvex Pvt. Ltd. Vs. State of Rajasthan & Anr (S.B. Civil Writ Petition No. 2459/2003) decided on 14.02.2005 wherein, this Court has held as under :-

"In view of the above, it sclear that a certificate which is

issued by the District Level Screening Committee cannot be questioned by the Commercial Taxes Officer and the Taxing Authority without getting correction in the certificate by following appropriate procedure by approaching the committee itself and could not have issued notice to thepetitioner on assumption that the petitioner was entitled to 60% exemption instead of 75% exemption.

It is clear from Annexure-3 that the Committee very specifically mentioned this fact in the exemption certificate itself that the petitioner was entitled to exemption from tax liability upto the extent of 75% and clearly mentioned that the petitioner shall deposit 25% of the tax, therefore, the notice issued by the Assistant Commissioner (Commercial Taxes Department) Special Circle, Bikaner is just against the exemption certificate and deserves to be quashed and set aside."

Learned counsel for the petitioner has further relied on a case decided by Hon'ble Supreme Court in the matter of Commissioenr of Sales Tax, U.P. Vs. Lal Kunwa Stone Crusher (P) Ltd. Reported in (2000) 3 SCC 525 wherein, Hon'ble Supreme Court has held as under :

"Even if gitty, kankar, stone ballast, etc may all be looked upon as separate in commercial character from stone boulders offered for sale in the market, yet it cannot be presumed that Entry 40 of the notification is intended to describe the same as not stone at all. In fact, the term "stone" is wide enought to include the various forms such as gitti, kankar, stone ballast. In that view of the matter, we think that the view taken by the

majority of the tribunal and affirmed by the High Court stands to reason. We are, therefore, not inclined to interfere with the same."

The basic argument of the learned counsel for the petitioner is that so long as the exemption certificate is in currency, the notice will be without jurisdiction and a notice without jurisdiction can therefore, be interefered. Here the petitioner has also clarified that in response to the notice, he has already filed reply but the authority concerned has made its intention clear that it is going to withdraw the exemption under the exemption certificate and the petitioner is going to levy tax and penalty.

Per contra, learned counsel for the Revenue submitted that having joined the issue after filing reply, it was incumbent that the petitioner should have waited for the decision of the respondent authorities. Coming in a writ petition challenging a notice is not a correct proposition because the notice cannot be said to be notice without jurisdiction and the principles as laid down in the matter of Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies District I, Calcutta and another reported in AIR 1961 SC 372 cannot be imported and if the notice is not without jurisdiction, then it is not for this Court under Article 226 of the Constitution to interfere against a notice. Further, the Hon'ble Supreme Court has held that conversion of gitty and dust from stone is not a manufacturing process. Once, there is an authoritative pronouncement that conversion of gitty and dust is not a manufacturing process, then it is to be seen that the Incentive Scheme was meant for manufacturers. When the

claim of the petitioner has been defined to be non-manufacturing, the exemption certificate looses its significance.

I have considered the rival submissions and have given my thoughtful consideration. It is not denied that the petitioner is converting stone into gitty and such product which has been declared by the Hon'ble Supreme Court falling within the category of manufacturing process. The Incentive Scheme of 1989 is for those enterpreneurs who are engaged in manufacturing process. Since the very basis of the claim i.e. manufacturing process is missing from the endeavour of the petitioner, his case for exmeption is a mis-placed sympathy towards himself. Even if a exemption certificate has been issued and that exemption certificate is in contravention of the law laid down by the Hon'ble Supreme Court, the same deserves to be ignored becaue by implication, the same has been set at naught. In any case, the present writ petition is only against a notice. Notices under the Act are issued by the authority concerned. If by virtue of certain interpretations and implications, the petitioner assumes that it is without jursidiction, then it is too much on the petitioner to claim. He has already filed reply. The authorities will consider his case in the light of the law prevailing the circumstances. Interfereing against a notice under Article 226 of the Constitution of India is uncalled for even on the principles laid down in the case of Calcutta Discount Co. Ltd. (supra).

There is no force in the writ petition. The writ petition is hereby dismissed.

(BHAGWATI PRASAD), J.